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In re Application of :
HEFLIN et al. :
Application No.: 10/715,243 :
Filed: November 18, 2003 :
For: NON-PYROTECHNIC REMOTE-CONTROLLED PARACHUTE JETTISON DEVICE :

DECISION ON PETITION REGARDING REQUEST TO WITHDRAW FINALITY UNDER 37 CFR 1.181

This is in response to applicants' petition under 37 CFR 1.181 filed July 15, 2005 requesting withdrawal of the finality of the Office action mailed June 6, 2005 as being premature.

The petition is **DENIED.**

Applicants allege that the final rejection mailed June 6, 2005 is premature because the Office action included a new ground of rejection neither necessitated by applicants' amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

A review of the record reveals that a first Office action was mailed January 13, 2005 in which the examiner rejected claims 1 and 6-13 under 35 U.S.C. 103(a) as being unpatentable over Underwood et al. in view of Kenzie. In the rejection, the examiner took official notice that remote control means are well known in this day and age and that one skilled in the art would have used remote control means to control the cutting of the extraction line.

MPEP 706.07(a) sets forth that the second or any subsequent action on the merits shall be made final except where the examiner introduces a new grounds of rejection that is neither necessitated by applicants' amendment nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

MPEP 2144.03(c) sets forth that if applicants challenge a factual assertion as not properly officially noticed or not properly based upon common knowledge, the examiner must support the findings with adequate evidence.

MPEP 2144.03(d) sets forth that if the examiner adds a reference in the next Office action after applicants' rebuttal, and the newly added reference is added only as directly corresponding evidence to support the prior common knowledge finding, and it does not result in a new issue or constitute a new grounds of rejection, the Office action may be made final.

A further review of the record reveals that a response was received March 10, 2005 in which applicants traversed the examiner's assertion of official notice. Claims 1 and 6-13 were finally rejected under 35 U.S.C. 103(a) as being unpatentable over Underwood et al. in view of Kenzie and Tillman in an Office action mailed June 6, 2005. In that Office action, the examiner introduced Tillman to show that remote control means to control distant actuators are well known in the art.

In view of the fact that the examiner introduced Tillman as directly corresponding evidence to support the prior common knowledge finding and did not rely on any other teachings in the reference, the finality of the Office action mailed June 6, 2005 is proper and will not be withdrawn. The period for response to that action continues to run from the mailing date of the action.

Any comments or concerns related to this decision should be forwarded to Teri P. Luu at (571) 272-7045.

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DH/tl: 7/28/05